

CASE STUDY ACCOUNT OF CAUSES AND LEGAL IMPLICATION OF WRONGFUL CONVICTION*

Abstract

Innocent persons could become victims of wrongful conviction when courts erroneously enter guilty verdicts for offences which they factually did not commit. Factors which could lead to error in judgment could either be within or outside the control of judicial officers. For instance, different forms of ineptitude and misconduct by the police officers, prosecutors, defence attorneys and other criminal justice actors could lead to the court making wrong findings. Using a case study approach, this paper points out various instances where wrongful conviction has occurred due to confessional statements obtained by oppression, wrong application of forensic science, incompetent legal representation etc. The paper which sets out to demonstrate the causes and legal implication of wrongful convictions, contends that wrongful conviction contravenes the essential principle of criminal justice which is to the effect that persons should not be made liable for offences which they did not committed and that it is better for many accused persons to escape punishment than for one innocent person to be punished. The case study approach which involves the review of cases where wrongful convictions were widely held to have occurred is herein adopted. Based on the cases sourced from Nigeria and other countries herein examined, the study found that the factors identified as causes of this aberration of justice, include: misidentification of the suspect by eyewitness, confessional statement either voluntary or coerced, faulty expert opinion, incompetent defence counsel, faulty forensic analysis and so on.

“Key words: “Wrongful Conviction”, “Police Misconduct”, “Criminal Justice”

1. Introduction

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The frequency in the occurrence of wrongful conviction admits that all is not well with the criminal justice system. This situation is not peculiar to Nigerian criminal justice system; even developed countries such as United States of America and Britain experience wrongful conviction. The acts and omissions of principal actors in the criminal justice administration are mostly responsible for the occurrence of these anomalies. Some persons find it hard to believe that an innocent person could be convicted. For instance, Judge Learned Hand¹ of America had stated in 1923 that in America, the judicial process had even been haunted by the ghosts of innocent persons who were erroneously convicted. According to him, the idea of wrongful conviction is nothing other than an “unreal dream”.² Unfortunately, the reality of wrongful conviction can be seen by its prevalent occurrence in America and other parts of the world within a decade after this statement.

The essence of criminal justice process is to determine the guilt of a defendant through due process, fair hearing procedure and application of appropriate punishment to those found guilty of offences. The principles of punishment are to retaliate, deter, educate/reform and rehabilitate offenders. But in reality, the justice system is sometimes manipulated by the key actors in the administration of justice,³ to punish even the innocent along with the said guilty due to the ineffectiveness of the administration of criminal justice system.

Many factors are responsible for the incidence of wrongful convictions. These include the possibility that the relevant laws are not correctly laid down before the court or the failure of people responsible for the administration of justice to strictly follow the guidelines, rules, procedure and evidence. However, some of the causes of wrongful convictions include but not limited to the following: Mistaken identity, ineffective representation by defense lawyers, police misconduct, false confession, improper forensic evidence etc.

The seriousness and frequency of wrongful conviction has led to this study. Some of the cases are obtained from already documented reports of civil society groups involved in campaign against wrongful conviction. This approach would effectively clear the doubt of persons who do not believe in the reality of its existence. The reviewed cases are categorized into the various causes of wrongful convictions in Nigeria and other parts of the world. This paper shall also demonstrate how wrongful convictions contravenes the administration of justice as a fundamental objective of the criminal law system.

1.1 Faulty Eyewitness Testimony

Faulty eyewitness testimony is one of the factors responsible for wrongful convictions and has been categorized as the leading cause of wrongful convictions. One of the evidence that prosecutors and defence counsel encounter in criminal cases is eyewitness errors, which has continued to plague the criminal justice system. Out of the 180 DNA exonerated cases in the US, eyewitness error occurred in 75 percent or more of those cases.⁴ Eyewitness testimony has been

¹*United State v. Garrison*, 291 F 646 at 649 (SDNY 1923).

²He believes that the prospect of unjust imprisonment is a terrifying plight and he wonders how people might fare in such grim circumstances. *Ibid*.

³A Senior Advocate of Nigeria was recently convicted for bribing a Federal High Court judge. See, B Ezeamalu, ‘Judge Sentences Convicted Senior Lawyer to One Month in Prison,’ *Premium Times* Nigeria, April 30, 2018.

⁴K Roach. ‘Wrongful Convictions: Adversarial and Inquisitorial Themes,’ *North Carolina Journal of International Law & Commercial Regulation* 35 no.2 (2010): 388.

the single biggest contributor to wrongful conviction in America. In most cases, DNA has proven that eyewitness identification is frequently inaccurate.

Courts do not believe that a trustworthy witness can be mistaken. Just one witness identification can be sufficient enough to secure conviction and can also play important role that will affect investigation in any case. An erroneous identification of a suspect can wreck police investigations by just putting focus on an innocent person while the real perpetrator is at large committing more crimes thereby putting the community in danger. Over 180 people have been erroneously convicted based on eyewitness misidentification and later proved to be innocent through the use of DNA test.⁵

Faulty eyewitness testimony and improper identification parade procedure are part of the leading causes of wrongful convictions. The challenge of using identification parade is that it appears like searching at all means for something that was not lost in the first place. The problem associated with identification parade is the inability of the witness to pick the actual person due to memory loss or close resemblance of lined up suspects. In a desperate move to pin criminal responsibility on someone, the witness may pick a wrong person innocently or maliciously.⁶ Another challenge is that, there is currently no legislative framework regulating the conduct of identification parade in Nigeria. Disappointedly, the recently enacted Administration of Criminal Justice Act 2015 did not provide rules relating to the proper conduct of identification parade.

1.2 False Confession and Police Misconduct

Research has shown that about 75% of suspects in custody confess voluntarily or involuntarily to crime not committed.⁷ People may confess to the offence not committed for so many reasons such as mental imbalance, fear of court punishment, police mischief or to avoid harsh punishment or coerciveness. Police misconduct is always harmful to the criminal justice system and can seriously increase the possibilities of erroneous convictions.⁸

In 2012 in Nigeria, Olatunji Olaide⁹ was released from prison after serving over 24 years in prison for the offence of murder and robbery he did not commit. The robbery incident in questions that led to the alleged murder he was convicted of occurred on May 30, 1988 in Lagos, where the victim was killed; his car was snatched and later found around Gwari village in Niger state. The police rounded up and arrested all the visitors to the village because the suspects ran into the bush. Olaide was in that village that day to buy cows as usual. He was in possession of N325,000.00 for the purchase of cows. He was arrested; the money he had disappeared upon his arrest up till today. He was tortured and was forced to sign an already prepared confessional

⁵ R A Leo and J B Gould. 'Justice in Action One Hundred Years Later: Wrongful Convictions after a Century of Research.' *The Journal of Criminal Law & Criminology* 100 no.3 (2010),p.825.

⁶ In the case of *Aichenabor v. State*, (2015) All FWLR (Pt. 763) p. 2005 the court held: A person who is the victim of a criminal act would want the culprit or culprits to be caught, to be brought to justice to answer for his/their criminal deed/deeds.

⁷R A Leo and D Davis. 'From False Confession to Wrongful Conviction: Seven Psychological Processes,' *The Journal of Psychiatry & Law* 38 (2010) 9.

⁸T L Johnson, 'Eyewitness Testimony, False Confessions, and Human Performance Technology: An Examination of Wrongful Convictions'. 2013. Thesis. 107. Retrieved on February 23, 2018 from <http://utdr.utoledo.edu/theses-dissertations/107>

⁹ Sentence to Death: An Innocent Man Steps out After 24 Years in Prison. *LEDAP* June 18, 2015.

statement under duress. His trial which started in 1989 lasted for 6 years. On 15 February, 1995 he was sentenced to death based on the confessional statement he purportedly made and signed at the police station. From the beginning of his case, police brutality occurred and throughout the investigation and this forced him to sign confessional statement.

In 2005, Mr. Obiagwu from LEDAP took up his case on *pro bono* and went on appeal to the Court of appeal in Lagos and after so many argument on the admissibility of the confessional statement by the lower court in arriving at guilty verdict, the Court of appeal allowed his appeal and set aside the lower court judgement because no corroborative evidence to support the so called confessional statement and trial within trial was never ordered and conducted before the statement was admitted in evidence by the court. He was exonerated and released on the 5th of June, 2012 after 24 years in prison for the offence not committed.

This case represents the role of coerced confessional statements and other facts that may be wrongly admitted and relied on in obtaining wrongful conviction such as calling material witness like the interpreter in this case; no eye witness was invited. The interpreter at that village confirmed to the police that Olaide had been coming to the village for a while to buy cows from Lagos. But there is nothing in the case file to that effect and the accused was not even allowed to make statement to that effect. This is evidence of police prosecutorial misconduct by withholding of important evidence that might be favourable to the accused to support his innocence.

In another instance, Monday was exonerated and freed from prison on July, 2014 after he spent 12 years in prison for the offence of robbing Boniface, his master, on 3 May, 2003.¹⁰ He was found guilty and sentence to death for the crime after his false confession caused by police torture was admitted in evidence by the court. From the beginning throughout the investigation, police brutality persisted. He was mercilessly beaten and brutalized by the police and was coerced to sign a confessional statement.

An incident which led to his conviction occurred on the 3rd of May, 2013, when he was driving his master, Boniface, to work. On reaching a lonely road he stopped the vehicle pretending that the vehicle had problems. He then came out of the car, opened the bonnet of the vehicle, slammed sand on his master's face and while the victim was totally confused and helpless, the suspect robbed him of a bag containing N70, 000 (seventy thousand Naira) and disappeared. Three months later, he broke into the house of his master and attempted to rob him. He was arrested by the police and charged before the High Court for robbery.

At the trial the prosecution called three witnesses, the victim and two policemen who investigated the cases. A total of six exhibits were tendered in evidence and marked as exhibits A, one dagger; B, one toy gun; C, a black singlet; D, a piece of cloth; E, the statement of the accused person before the state CID Benin, dated August 14, 2003 and F, the statement of the accused made at the Aideyan police station dated August 8, 2003. Monday gave evidence in his defence, denying that he robbed his master, Boniface who was PW1 in this case, of the alleged sums of money. He rather contended that Boniface owed him arrears of salary which he, PW1 refused to pay, in spite of his passionate appeal. This led to his abandoning PW1 on the road in

¹⁰*Monday Ilada Prosper v. State* Unreported. Appeal Number CA/B/213C/2007 Delivered on July 19, 2014 at Court of Appeal, Benin.

anger on the said day. At the close of the trial, the lower court convicted Monday for robbery and was sentenced to death by hanging.

LEDAP took up his case on *pro bono* and appealed against his conviction and sentence to the Nigeria Court of Appeal. On 9th day of July, 2014, the Nigeria Court of Appeal, in a unanimous decision, allowed the appeal resulting in his exoneration on the ground that the coerced confessional statement was rebuttable. It was also held that the evidence by the main prosecution witnesses were contradictory and unreliable to secure conviction. He was therefore released after almost 12 years in prison for crime he did not commit. The above case clearly shows an example of police brutality that leads to a false admission of commission of an offence. It clearly shows that the two police officers who investigated the case and testified against him engaged in police misconduct by obtaining a coercive confessional statement from him.

In 2015, Kingsley Akhabue was acquitted and was set free after he spent almost 8 years in custody for conspiracy to commit armed robbery.¹¹ The case against Akhabue was that in the night of March 22, 2008 at about 3.45am, five masked men armed with pistol, iron rod and other sharp objects invaded the house of one Mr. Sunday Otuya, prosecution witness 1 (PW1) located at No 10 Taiwo Street, off Oremeji, Osuti Road, Egan, Lagos. In the course of the attack, the five men manhandled PW1, his wife and children and robbed the household of two mobile **phones (of Motorola and Nokia model)** and an undisclosed substantial amount of money. The victim heard the voice of their leader and recognized it to be the voice of Akhabue because Akhabue had worked for him in his house some four years earlier. He struggled with Akhabue who got injured in the process of the struggle. The PW1 was also covered with Akhabue's blood. He reported the matter to the police the following day and did not mention Akhabue's name to the police that day until a year later when one of the suspects in a different armed robbery report mentioned Akhabue's name to the police as one among the five masked men that had robbed the house of PW1 a year ago. Akhabue was arrested and was coerced to sign an already made confessional statement which he denied the voluntariness. The Court below accepted the Prosecution's case, convicted and sentenced him to death.

Mr. Obiagwu, the lawyer from LEDAP representing the convict on *pro bono*, filed an appeal on his behalf challenging his trial, conviction and sentence on the ground that miscarriage of justice had occurred in the matter, as the two confessional statements of the defendant upon which he was convicted were not voluntarily made and also violated the mandatory provisions of Section 9(3) of the Administration of Criminal Justice Law of Lagos State (ACJL), 2015 requiring the recording of the suspect's statement. PW1 knows the accused very well; but his statement to the Police did not mention the accused as a suspect. This failure, without any explanation proffered thereto, cast dark cloud of doubt on the PW1's evidence in the case. It shows the identification of the accused, Akhabue by the victim is in error because if he actually identified him at the scene of crime that was the first he would have mentioned it to the police.

Even the so called confessional statement the court relied upon to convict the accused did not even admit the offence charged. The items the victim said were robbed by the armed robbers were a Motorola and Nokia phones, whereas the confessional statement stated that it was Sony Ericson phones that were robbed from his unfenced house. However, PW1 said in evidence that

¹¹*Kingsley Akhabue v. State* Unreported in Appeal No. CA/L/1056/2011 Delivered on 11th December, 2015 at the Court of Appeal, Lagos.

his own house is fenced. The Court of Appeal ruled that for a confessional statement to nail a defendant, it must admit the offence charged before it can be used effectively against the confessor/defendant in accordance with Section 28 of the Evidence Act. So the statements marked exhibit D and DI could not be recognized as confessional statements because the statements also breached Section 9(3) of the Administration of Criminal Justice Law of Lagos State which rendered them impotent. Also, that the evidence for the Respondent at the Court below did not link the accused with the commission of the offences charged, in that, the only eye witness, PW1, could not prove that the leader of the five man armed gang that robbed him on that day was the defendant. The appeal was allowed on its merit; the appellant was discharged and acquitted.

1.3 POLICE MISCONDUCT

In 2018, Kevin Bailey was exonerated and released in the United States after serving 28 years in Prison,¹² while his co-convict, Corey Bachelor was earlier set free in 2004 after serving 15 years in prison for the murder of Lula Mae Woods who was assassinated on June 1st, 1989 based exclusively on confessions obtained by an Area 2 Chicago Police detective, John Burge. The victim, Wood was found dead by a neighbour in her garage with a Domino Pizza cap found under her body at the scene of the crime. This pizza cap became the center of investigation. Bachelor was one of a number of neighbourhood teenagers rounded up by the police and subjected to questioning on the murder of wood. Bailey was picked up because Bachelor told them he was with Bailey at the time the murder was committed which was also confirmed by Bailey.

The two suspects were just 19 at the time they were arrested for murder just five days after the murder. Bachelor was choked, kicked and knocked against the wall by detectives until he admitted committing the offence. On the part of Bailey, he was questioned for more than 12 hours and refused to confess until he was grabbed by the neck and threatened by the detective. They were so scared that they gave confession but their confessions were madly inconsistent with each other and did not fit known details about the murder case under investigation. The two young teenagers always maintained their innocence; they were tried separately and convicted based solely on their confessions. Bailey was sentenced to 80 years and was incarcerated until his release on 30 January, 2018; while Bachelor was sentenced to 30 years' imprisonment and was released in 2004 after serving 15 years in prison.

The Innocent Project and the People's Law office representing Bailey and The Exoneration Project and The Centre on Wrongful Convictions of Youth representing Bachelor, sought post-conviction relief for their clients in the hope of rectifying the injustice perpetrated on the two teenagers 30 years ago. They believed sufficient force and coercion can force anyone to crack under pressure, which does not solve such crime but only destroys the lives of defendants and their family members who are affected by their imprisonment. They thoroughly investigated the case and eventually recognized that their convictions cannot be sustained despite all early opposition by the prior Cook County State's Attorney who earlier secured DNA testing. The prosecution excluded DNA test of the hair found from the Domino pizza cap worn by the murderer and the bloody towel found near the body did not match that of Bailey and Bachelor. A Cook County Court dismissed the murder convictions of Kelvin Bailey and Corey Bachelor

¹² 'Two Chicago Men Exonerated Based on DNA and Coerced False Confession.' Accessed March 23, 2018, <https://www.innocenceproject.org/two-chicago-men-exonerated-based-dna-evidence-showing-physically-coerced-falsely-confessing-burge-era/>

based on DNA and other evidence that the two men who were teenagers at the time of their conviction, were physically coerced into falsely confessing to the crime they did not commit. This case clearly shows an instance of police brutality that led to a false confession.

There was no suspicion that detective Jon Burge and his subordinates engaged in police brutality by forcefully extracting confessional statements from Bailey and Bachelor until the Chicago Tribune published a sequence of articles that beamed its searchlight into affairs of the Chicago Police Department. They discovered that there were close to 260 murder cases where confessions were made by accused persons who were released or whose cases had been dismissed. Over hundred black men and women were later discovered to be exposed to torture that was racially motivated which included use of electric shock, mock executions, suffocation, hanging and beating in Chicago by detective Jon Burge and his team. It is pertinent to note that police bad behavior in any form is harmful to the criminal justice system and can seriously increase the chances of wrongful incarceration. Burge was later dismissed from the Chicago Police Department in 1993 and convicted for perjury and obstruction of justice arising from the torture cases in federal court in 2010.

However, many people still remain and are suffering in prison as a result of coerced confessions based in wholly or partly on physically false confessions in Chicago. The Central Park Five Case is another instance of police misconduct in USA that led to the conviction of innocent persons. In 2002, the five convicted teenagers- Kharey Wise, Antron McCray, Raymond Santana, Yusef Salam and Kevin Richard were released and their convictions were vacated after they were convicted for murderer, Matias Reyes, who was serving life sentence in prison confessed to the crime.¹³ The fact of this case is that in 1989, a young white female stockbroker, Trisha Meili was jogging in the park and was attacked, raped, beaten and left almost dead by some teenagers. She was hit on the head and she remembered nothing.¹⁴ Within days, the above five black teenagers between the ages of 14 to 16 were arrested and charged with the crime. Four of them confessed on video tape that the victim described as a jogger had been one of their victim that night but they later recanted the confessions saying that their statements had been coerced from them by the police. Despite this, they were still convicted of the crime.

They were serving their different jail terms when another person, Reyes, confessed to the crime that he alone had raped the jogger and DNA evidence corroborated Reyes involvement in the crime. From the start, there were clear weakness in the evidence. There proved to be no physical or forensic evidence recovered at the scene or from the person or effects of the victim which connected the five defendants to the crime. Even though the teenagers had confessed to have launched the attack, their versions of what happened that night varied widely from their account of crime location as described by the victim. The confession was coerced, as one of them recounted that he heard the police beating up another in the other room. The police would tell him that he is next. While the confessions were videotaped, the hours of interrogation that took place before the confessions were not videotaped.

There were also inconsistencies about the weapon that was used that night. Some of them said she was repeatedly stabbed but there was no knife wound on the victim. Even the eye witness testimony from other victims that night suggested that the five boys were involved in

¹³R Slodghill. 'True Confession of the Central Park Rapist.' *The Daily Times* December 9, 2002.

¹⁴M A Faber. 'Smart Driven Woman Overcomes Reluctance.' *The New York Times* July 17, 1990.

spells elsewhere in the park as at the time of the crime when the jogger was being attacked. Moreover, Reyes had committed another assault in the park few days to the attack on the jogger. The police closed their eyes on the similarities in the cases and contradictions in the confessions of the five defendants because if they had noted these they might have considered other suspects besides the five boys. “They were not going to let anything spoil their neatly tied package of convictions and used the five teens as scapegoats”.¹⁵ After their release they agreed to more than \$40 million settlement with New York City in a law suit as compensation for the numbers of years spent in jail.¹⁶

1.4 Forensic Error

There are several forensic procedures that can cause wrongful conviction involving forensic error apart from underlying fingerprints and hair analysis. Much of the forensic evidence tendered in courtrooms nowadays in countries like UK and US are surveyed by procedures that were either created in police stations and laboratories or have been made for the purpose of crime detection and securing convictions.¹⁷ With the inability to use peer-reviewed forensic evidence or confirmed scientific practices, especially in a country like Nigeria where the use of DNA analysis to investigate crime is limited, the Innocence Project showed that close to half of the first set of 225 DNA exonerations were as a result of faulty or false evidence.¹⁸

The Alfred Swinton case in US discloses one instance of failure to use scientific-based practices in crime investigation or wrong scientific analysis which resulted in conviction of an innocent person. Swinton was exonerated and the murder charge against him was dismissed in March, 2018 after DNA testing exonerated him. Swinton spent 18 years in jail out of the 60 years he was sentenced for killing Carla Terry in 1991.¹⁹ Swinton was convicted based on the testimony of a forensic expert who gave evidence that the bite mark on Terry’s right breast matched Swinton’s teeth. But astonishingly, the saliva sample traced in the bite mark was recently tested by the state and the results showed that Swinton’s DNA was not the same which indicates that the initial DNA test from the forensic expert was not correct. Swinton was the first suspect identified by the police due to the fact that he was seen with the victim of the crime, Terry at a bar earlier that day before she got missing. Swinton was arraigned, but his case was dismissed by a judge, as there was no sufficient evidence to prosecute him for the said murder. He was rearrested seven years later on two new found pieces of evidence, a bra that was picked from a box in his apartment at the time of the murder and the testimony of one Dr. Constantine Karazulas who testified that the bite mark on Terry’s breasts is the same as Swinton’s teeth. Terry’s sister also testified that she was the one that gave the bra to her sister, Terry the day she

¹⁵ This is according to Roger Wareham, the Attorney for two of the victims of Central Park Five.

¹⁶ Central Park Jogger Case Settled for \$40 Million. Associated Press, June 20, 2014.

¹⁷ R Balko; ‘Wrongful Convictions: How Many Innocent Americans are Behind Bars?’ *Reason Magazine* 43 no.3 (2011) 20.

¹⁸ *ibid.*

¹⁹ D Owens; D Altimari; ‘Murder Charge Dismissed Against Alfred Swinton, Man Who Served 18 Years after Wrongful Conviction.’ *Courant News* March 1, 2018.

was murdered. The prosecutor also maintained to the jurors that Swinton kept the bra as a trophy from the murder.

Lawyers from Innocent Project representing Swinton pressed the state officials to review all the evidence on Terry's case as one of the over 650 cases that state officials were reviewing at that time using a federal grant in the US. The new DNA analysis conducted on the bra in 2015 by the forensic laboratory revealed that neither Terry nor Swinton's DNA was found on the bra. The new test result discloses that the bra did not belong to Terry and she was not wearing it in the night she was murdered. The new DNA test conducted on the saliva that was found on Terry's two breasts at the time of Swinton's trial also shows that the saliva was not Swinton's DNA and the DNA found near Terry's vagina was not that of Swinton either. With this development, the attorney attacked the evidence of the forensic expert who originally testified against Swinton, the expert later retracted his trial testimony.

In this case it was later discovered that the evidence used in the original trial was faulty and the conviction and sentence was in error which resulted in an innocent man's incarceration for 18 years for the offence committed by another person. The use of flawed and unscientific evidence in any trial or case is very troubling for the criminal justice system, especially in Nigeria where the use of forensic investigation is gain wide usage and acceptance. As forensic evidence is regarded as the most trusted evidence by jury members in countries like US, USA and China, the general public, and even judges, it can be difficult for a defendant to contest incorrect and even faultily analyzed evidence during trial.²⁰ Furthermore, it can be challenging to controvert such evidence, as forensic examiners can be expensive, which many defendants may not afford without the help of external organizations, like the Innocence Project and others.

It must be pointed out that, even though DNA may bring about exonerations, it is not easily gathered as evidence in criminal cases unlike, fingerprint, hair, and fabricator evidence. Generally, the practice of forensic testing and investigation in criminal matters in the United States and United Kingdom do not have competence and background in scientific evidence, which consequently affects the value of the evidence and hikes the likelihood of erroneous convictions. It is more difficult as these flawed scientific practices are peculiar with the regularly used evidence such as fingerprint, hair, bite mark analysis and arson analysis.

1.5 Incompetent Legal Representation

Incompetent legal representation has been seen as one of the leading factor that give rise to wrongful conviction or death penalty imposed on defendants in the past few years. There are several means by which defence lawyers may incompetently defend their clients, which could arise in form of insufficient cross examination of witnesses, unjustified plea bargaining confessions, failure to file the right applications, failure to confront the voluntariness of a confessional statements, failing to challenge the credibility of forensic evidence, and inadequate investigation of the case.²¹

²⁰E Smith, and A J Hattery. 'Wrongful Conviction and Exoneration.' *Journal of African American Studies* 15 no. 1 (2011) 74.

²¹Leo and Gould. 'Justice in Action...', *op cit* at p. 825.

An example of incompetent defence representation is shown in the case of Malcolm Alexander, who was convicted to mandatory life sentence without parole. He served nearly 38 years in prison for an offence of rape in 1979 which DNA evidence later proved him not guilty.²² After a reinvestigation of the case by District Attorney, the Court dismissed the indictment and ordered his release on January 30, 2018. Malcolm was arrested for the crime of rape of the proprietress of an antique shop in Whitney Avenue, Gretna, Louisiana in November 8, 1979. A black man grappled the victim, a white woman, from behind in the vacant shop and moved to a little badly lit private bathroom at back of the shop. That was where she was raped from behind at gun point. In February 1980, Malcolm, a black man, had a mutual romantic affair with a white woman. She asked for money and she subsequently claimed he assaulted her sexually when she was non cooperative.

This allegation of romantic affair between them was not corroborated by a witness and the police couldn't proceed with the charges any longer. This encouraged the police to hang Malcolm's image in a photo gallery which was presented to the victim of the present rape case more than four months following her attack and rape at gun point by a total stranger. The offender stood behind the victim throughout the period the crime lasted which limited the chances of the victim viewing the assailant. The police report showed that the victim tentatively selected Malcolm's photo yet they still carried out identification parade three days after, which included Malcolm and other suspects. However, he was the only one from the photo gallery that was presented to the victim for the second time during the identification parade procedure. According to the police report on the line up the victim made a likely recognition and the word 'tentative' was marked against the number given to Malcolm by the Police.

The victim's confidence was documented as ninety-eight percent certainty that Malcolm committed the offence and also testified to that effect. The rape kit that could have either buttressed the victim's identification or substantiate that Malcolm was not the offender was never sought. Malcolm was 21 years old at the time of his conviction for the offence after his trial was commenced and concluded on the same day because his counsel did not provide effective representation. His counsel, who was later disbarred following several complaints of negligence and neglect of his clients were filed against him, failed to carry out his fundamental duty of putting up a strong defence for his client. An assessment of the one-day trial shows that his counsel refused to make an opening statement. Neither was any witness called in support of the case of the defence. He also did not carry out adequate cross examination of the prosecution witnesses on the identification of Malcolm by the victim nor did he deliver a closing argument.

The counsel promised to appeal the case after Malcolm received a life sentence but he never did. In 2013, hair sample discovered from the crime scene was found at Crime Laboratory of the Sheriff's Office. The Innocence Project sought DNA testing of the hair evidence on behalf of their client, Malcolm. Three of the hair samples were of the similar DNA profile which was not a match to neither that of Malcolm nor the victim. It should be noted that due to this information and ensuing interrogations of the victim, the District Attorney's office collaborated with the Innocent Project to ensue Malcolm's conviction is set aside and the indictment was eventually dismissed on January 30, 2018.

²²“Louisiana Man Exonerated by DNA Evidence after Serving Nearly 38 Years.” Accessed January 30, 2018 <https://www.innocenceproject.org/louisiana-man-exonerated-dna-evidence-serving-nearly-38-years/>

It should be noted that in the absence of effective defence counsel, the system would amount to nothing other than a conviction grinder.²³ Vanessa Potkin, who is a director of post-conviction litigation at the Innocent Project, said that the implication of the case had a potential tragic situation for Malcolm who stood the risk of a compulsory life sentence without the chances of parole, notwithstanding, the defence counsel saddled with the responsibility of protecting his client's life failed to do anything to give effective defence.²⁴ This case demonstrates a clear instance of incompetent legal representation and how it can lead to wrongful conviction. Defendants would not suffer ordeals of wrongful conviction if their counsel had not fallen short in professional responsibility to their client.

Defence counsel should endeavour to locate other eye witnesses at the crime scene, in order to obtain favourable testimonies to uphold their client's innocence. While it is recognized that instances of inefficient defence happen in cases where the defendants are poor, these issues also occur in any of the other circumstances where there is lack of quality control by regulatory professional bodies, and absence of enthusiasm on the part of the defence attorney in performing his professional function on behalf of the defendant. Incompetent legal defence is one of the major factors that accounts for wrongful convictions.

The defence counsel is in a position to protect the defendant from shortcomings of other criminal justice players such as police and prosecutorial misconduct, eyewitness testimony or other factors that must have taken place before, during and after trial. In the case of Larsen, the conflicting testimony of the police officer at the two preliminary hearings should have been brought to the notice of the court by Larsen's counsel. This should have raised the suspicion of Larsen's counsel to make further investigation to prove his client's innocence. In all, incompetent legal defence is a major element that can directly affect the outcome of a case, as the quality of defence put up by the defendant counsel is likely to point out and correct the errors which must have occurred prior to the trial and assist the court reach a proper verdict by pointing out the facts and legal principles to be considered by the court in determination of the case.

2. Wrongful Conviction as an Affront on Justice in Criminal Trial

Justice derives its origin from the Latin word '*Justitia*' which connotes righteousness, equity, uprightness, fairness and justness. Justice has been defined as 'the existence of a proper balance.'²⁵ Justice was defined as 'the fair and proper administration of laws'²⁶; while the 8th edition,²⁷ referred to justice as 'a just trial of a case on its merit'. Though differently described, there is conceptual unity of the term amongst the aforementioned legal sources.

Generally, the term justice is understood in two different senses. In the wider sense, justice is synonymous with morality. In the narrower sense, it refers to the fairness and equal treatment of all. It is the responsibility of the court to apply established laws and rules for the

²³ Smith, and Hattery, 'Wrongful Conviction and Exoneration' at p.74.

²⁴ *ibid.*

²⁵ I McLean and A McMillan, *Oxford Concise Dictionary of Politics* 4th edn. (Oxford: Oxford University Press, 2019) Accessed August 1, 2019 <https://www.oxfordreference.com/view/10.1093/acref/9780199207800.001.0001/acref-9780199207800-e-698?rskey=dNjbDp&result=756> 1 August, 2019.

²⁶ B A Garner; *Black's Law Dictionary*, 7th edn. (Minnesota: West Group, 1999), 867.

²⁷ B A Garner, *Black's Law Dictionary*, 8th edn. (Minnesota: West Group, 2004), 881.

purpose of establishing, dispensing and apportioning justice.²⁸ It was once held by the Court of Appeal that: ‘justice means fair treatment, and justice in any case demands that the competing rights of the parties must be taken into consideration and balanced in such a way that justice is not only done but must be seen to be done’.²⁹ Also, in *Bassey v. Attorney General of Akwa Ibom & Ors*,³⁰ the Court of Appeal, while illuminating on the term ‘Justice’ held that: ‘It is trite that the term “justice” fundamentally denotes the impartial and appropriate administration of justice.’

Justice according to law implies that the law itself must be impartial, just and equitable to ensure that the innocent are set free while the actual offenders are adequately punished and not otherwise.³¹ While it is fair that offenders are punished with commensurate sentence, it amounts to injustice to convict and punish persons who are innocent of crime as the justification for punishment is that it is a reaction to the desecration of penal law. The concept of justice states that no one should be punished except for fault done in the exercise of his will. Everyone is entitled to fair hearing and believed to be innocent until he is proven guilty by the court of competent jurisdiction upon application of due process of law in arriving at a just verdict.

Justice is far from been done when a wrong person is arrested, prosecuted and convicted and the real offender remains free to commit more crimes and constitute a threat to the society at large and make the society unsafe for people to live in. This undermines the credibility of the criminal justice system. It affects the willingness of ordinary citizens to support the criminal justice system as crime reporters or witness; people are afraid of reporting crime for fear of being arrested.³² Some innocent persons are on death row for years if not for decades.

Justice is a right guaranteed to all. Where there is a failure of justice leading to wrongful conviction of an innocent person due to non-conformity with the due process of the law, such right has been breached. In such a case, rectification justice for the violation in form of compensation for the loss of wellbeing is required to correct such failure.³³ The target is to restore the person back to his previous position before the wrongful conviction.³⁴

3. Conclusion

Obviously defendants and witnesses may lie anywhere and under all systems; experts may draw erroneous conclusions based on the materials at hand all over the world: and there may be incompetent legal staff anywhere and at any time. It would be wrong, however to conclude from this obvious state of affairs that wrongful convictions have to be accepted as part of a risky

²⁸O O Ojotalayo; ‘Effective Justice Delivery- A Legal Practitioner Perspective’, Being a Paper Presentation delivered at the Ogun State Judges Conference, held at the High Court Premises, Abeokuta on 26 September, 2017.

²⁹*Obajinmi v. Adedeji* (2008) 3 NWLR (Pt. 1073) pp. 19-20.

³⁰(2016) LPELR- 41244(CA)

³¹M M Akanbi; *The Judiciary and the Challenges of Justice: Selected Papers and Speeches of Honourable Justice Muhammed Mustapha Akanbi, President, Court of Appeal, Nigeria* (Lagos: Patrioni Books 1996) 33.

³²A I Olatunbosun, ‘Public Attitude Towards Reporting Crimes in Nigeria.’ *Nigeria Law and Practice Journal* 2, no. 2 (1998) p.107.

³³P Vallentyne, ‘Nozick’s Libertarian Theory of Justice’ in *Anarchy, State, and Utopia—A Reappraisal*, eds. Ralf Bader and John Meadowcroft (Cambridge: Cambridge University Press, 2011) pp.145-167.

³⁴This is captured in the Latin maxim: *Restitutio in integrum*. This is used as the basis for award of damages for breach of contract and tortious liability at common law.

world. Indeed, systems also differ in how they deal with errors and in how they act in order to control such risks.³⁵

This paper highlighted the causes of wrongful convictions using the case study approach. Based on the cases sourced from Nigeria and other countries herein examined, the factors identified as causes of this aberration of justice, includes: misidentification of the suspect by eyewitness, confessional statement either voluntary or coerced, faulty expert opinion, inefficient defence counsel, faulty forensic analysis and so on. Wrongful conviction is a problematic societal issue that warrants serious attention.

This study provides a greater understanding of the issues that lead to wrongful conviction in Nigeria from the level of crime investigation through to the judicial processes. Many prisoners, including those on death row, in Nigeria and other countries like US and UK might have been wrongly convicted considering the number of people exonerated on appeals. They are victims of high handed police tactics, flawed forensic science, misidentification of suspects, incompetent defence counsel, prosecutorial misconduct etc. The advocacy of civil society groups and lawyers in private practice has exposed these shortcomings as they successfully appeal and gets some of these convictions overturned.

Every stakeholder in the criminal justice system must constantly be on guard against potential factors that occasions this miscarriage of justice and must be provided with appropriate resources and training to reduce the risk of wrongful convictions. Indeed, police officers and prosecutors, services, the entire police and prosecution communities, must make the prevention of wrongful convictions a constant priority.³⁶

Adoption of information gathering approach in police interviews is also recommended to the police force and other security agency. Accusatorial interview methods should be avoided to reduce the risk of false confession and indirectly of wrongful convictions might be reduced without any loss in the efficiency of police interrogations. This measure alone might significantly reduce the odds of innocent defendants being wrongfully convicted.

³⁵M Killias, 'Errors Occur Everywhere- But Not at the Same Frequency: The Role of Procedural Systems in Wrongful Convictions' in *Wrongful Convictions and Miscarriage of Justice: Causes and Remedies in North American and European Criminal Justice*, eds. Huff Ronald & Killias Martin (London: Routledge Publishing Inc. 2013) 69.

³⁶*ibid.*